

ROBERT J. HONAKER,)	
)	
Plaintiff)	
)	
v.)	Case No.:
)	
PORTFOLIO RECOVERY)	COMPLAINT AND DEMAND FOR
ASSOCIATES,)	JURY TRIAL
LLC, a wholly-owned subsidiary of)	
PORTFOLIO RECOVERY)	(Unlawful Debt Collection Practices)
ASSOCIATES, INC.,)	
)	
Defendant)	

ROBERT J. HONAKER (“Plaintiff”), by and through his attorneys,
KIMMEL & SILVERMAN, P.C., alleges the following against PORTFOLIO
RECOVERY ASSOCIATES, LLC, a wholly-owned subsidiary of PORTFOLIO
RECOVERY ASSOCIATES, INC. (“Defendant”):

1. This is an action for actual and statutory damages for violations of the Fair Debt Collection Practices Act (hereinafter the “FDCPA”), 15 U.S.C. §1692 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. §1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the State of Delaware, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. §1391(b)(2), as Defendant conducts business and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

5. Plaintiff is a natural person residing in Newark, Delaware, 19771.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. In the alternative, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a) and Weinrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate headquarters located at 120 Corporate Boulevard, Norfolk, Virginia 23502.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §

1 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

2 10. Portfolio Recovery Associates, Inc., through its wholly-owned
3 subsidiary, Portfolio Recovery Associates, LLC, purchases, manages and collects
4 debts.
5

6 11. Defendant acted through its agents, employees, officers, members,
7 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
8 representatives, and insurers.
9

10 **FACTUAL ALLEGATIONS**

11 12. At all relevant times, Defendant was attempting to collect an alleged
12 consumer debt from Plaintiff.

13 13. The alleged debt, a Capital One credit card account, arose out of
14 transactions, which were primarily for personal, family, or household purposes.
15

16 14. Plaintiff disputes owing the alleged debt.

17 15. Beginning in August 2011, and continuing through April 2012,
18 Defendant repeatedly and continuously contacted Plaintiff on his home telephone
19 seeking and demanding payment of the alleged debt.
20

21 16. At times, Defendant contacted Plaintiff as frequently as twice a day in
22 its attempts to collect the alleged debt.

23 17. On more than one occasion, Plaintiff informed Defendant that he had
24 satisfied the alleged debt with a previous debt collection company, Associated
25

1 Recovery Systems.

2 18. Plaintiff informed Defendant that he would send proof of payment.

3 19. In response, Defendant insisted that they still could collect the alleged
4 debt.
5

6 20. Plaintiff sent Defendant documentation showing that on January 29,
7 2010, he authorized Associated Recovery Systems, Inc. to electronically debit
8 \$1,840.33 from his checking account in full satisfaction of the Citibank credit card
9 account. See Exhibit A, Plaintiff's proof of payment.
10

11 21. The check was endorsed by Associated Recovery Systems, Inc., and
12 the funds withdrawn from Plaintiff's checking account. See Exhibit A.
13

14 22. Despite having been provided with proof of payment, Defendant
15 continued to contact Plaintiff in an attempt to collect on the account that had been
16 paid in full.
17

18 23. In fact, Plaintiff sent a second letter to Defendant, again providing
19 proof of payment, so that Defendant could update its records and stop contacting
20 him; however, Defendant persisted in attempting to collect the debt. See Exhibit
21 B, Plaintiff's letter to Defendant.
22

23 24. Defendant knew or had reason to know that the debt was not owed,
24 never investigated and/or failed to take note that whatever it purchased from the
25 original creditor bearing Plaintiff's name was not in fact an unpaid debt.

1 25. Defendant knew that its collection methods were premised upon an
2 outstanding debt being owed but also know that a number of accounts it purchased
3 from the original creditor were not due and payable at the time they were acquired
4 by Defendant. Despite this, Defendant still initiated and maintained collection
5 activities to secure unjust enrichment and windfall receivables.
6

7 26. Defendant had no lawful basis to seek collection of the debt, before
8 and certainly after being provided information showing the debt had been paid
9 previously.
10

11 27. Defendant's actions in attempting to collect the alleged debt were
12 harassing, abusive and highly deceptive.
13

14 **DEFENDANT VIOLATED THE**
15 **FAIR DEBT COLLECTION PRACTICES ACT**

16 28. In its actions to collect a disputed debt, Defendant violated the
17 FDCPA in one or more of the following ways:

18 **COUNT I**

19 a. A debt collector violates §1692d of the FDCPA by engaging in
20 conduct the natural consequence of which is to harass, oppress, or
21 abuse any person in connection with the collection of a debt.
22

23 b. Here, Defendant violated §1692d of the FDCPA by calling
24 Plaintiff multiple times in its attempts to collect a debt that had
25 already been paid, with the intent to annoy, abuse and harass

1 Plaintiff.

2 **COUNT II**

- 3 a. A debt collector violates §1692e of the FDCPA by using unfair
- 4 and unconscionable means in connection with the collection of a
- 5 debt.
- 6 b. A debt collector violates §1692e(2)(A) of the FDCPA by falsely
- 7 representing the character, amount or legal status of any debt.
- 8 c. Here, Defendant violated §§1692e and 1692e(2)(A) of the FDCPA
- 9 by falsely representing the legal status of a debt, in that it claimed
- 10 Plaintiff owed a debt when in fact the debt had been paid in 2010.

11 **COUNT III**

- 12 a. A debt collector violates §1692f of the FDCPA by using unfair and
- 13 unconscionable means in connection with the collection of a debt.
- 14 b. A debt collector violates §1692f(1) of the FDCPA by collecting an
- 15 amount (including any interest, fee, charge, or expense incidental
- 16 to the principal obligation) unless such amount is expressly
- 17 authorized by the agreement creating the debt or permitted by law.
- 18 c. Here, Defendant violated §§1692f and 1692f(1) by collecting a
- 19 debt that Plaintiff did not owe, as the debt had been paid.
- 20 Furthermore, Defendant violated §1692f by failing to investigate

1 the information provided by Plaintiff and/or update its records to
2 avoid the further harassment of Plaintiff.

3 WHEREFORE, Plaintiff, ROBERT J. HONAKER, respectfully prays for a
4 judgment as follows:
5

- 6 a. All actual damages suffered pursuant to 15 U.S.C.
7 §1692k(a)(1);
8
9 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
10 pursuant to 15 U.S.C. §1692k(a)(2)(A);
11
12 c. All reasonable attorneys' fees, witness fees, court costs and
13 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
14 § 1693k(a)(3); and
15
16 d. Any other relief deemed appropriate by this Honorable Court.

17
18 **DEMAND FOR JURY TRIAL**

19 Pursuant to Civil Rule 38, Plaintiff hereby demands a trial by jury on all
20 issues in this action, and any issues relating to the amount of attorneys' fees and
21 litigation costs to be awarded should Plaintiff prevail on any of his claims in this
22 action.
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24
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1 RESPECTFULLY SUBMITTED,
2 KIMMEL & SILVERMAN, P.C.

3 Date: 01/03/2013

4 By: /s/ W. Christopher Componovo
5 W. Christopher Componovo
6 Attorney ID #3234
7 Kimmel & Silverman, P.C.
8 Silverside Carr Executive Center
9 Suite 118, 501 Silverside Road
10 Wilmington, DE 19809
11 Phone: (302) 791-9373
12 Facsimile: (302) 791-9476
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